

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PEDRO VELEZ,

Case No. 09-10519

Plaintiff,

Denise Page Hood
United States District Judge

vs.

MICHIGAN DEPARTMENT
OF CORRECTIONS, *et al.*,

Michael Hluchaniuk
United States Magistrate Judge

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR LEAVE TO AMEND COMPLAINT (Dkt. 11) AND
DEFENDANT MDOC'S MOTION TO EXTEND (Dkt. 13)**

Plaintiff filed a complaint against defendants on February 12, 2009. (Dkt. 1). Plaintiff then filed a motion for leave to file an amended complaint on April 14, 2009. (Dkt. 11). One of the defendants, the MDOC, filed a motion to extend the time to answer the complaint. (Dkt. 13).

Where "no defendant has yet filed a responsive pleading to the original complaint," a plaintiff is "entitled to amend his complaint as of right pursuant to Fed.R.Civ.P. 15(a)." *Reynolds-Bey v. Harris-Spicer*, 2007 WL 1063304, *1 (W.D. Mich. 2007); *see also Sousa v. Ferguson*, 2005 WL 1796131 (W.D. Mich. 2005) (An "amendment as of right under Fed.R.Civ.P. 15(a) can be forestalled only by

the service of a ‘responsive pleading,’” and “a motion to dismiss or for summary judgment is not considered to be a ‘responsive pleading’ for the purposes of Rule 15(a.”). Thus, plaintiff may amend his complaint as of right.

Based on the foregoing, plaintiff’s motion to amend is **GRANTED** and plaintiff has 21 days from the date of entry to this order to file an amended complaint with the Court. Defendant MDOC’s motion for extension is **GRANTED** and defendant MDOC will have 60 days thereafter in which to answer or otherwise respond to plaintiff’s amended complaint.

The Court further **ORDERS** that plaintiff must serve all defendants other than the MDOC, who has already appeared in this action, in accordance with Federal Rule of Civil Procedure 4(e) or 4(h), as appropriate, or plaintiff may request that these defendants waive service under Federal Rule 4(d), using the appropriate form. For the convenience of plaintiff, who is incarcerated, the Court will mail a copy of the waiver of service form along with this Order to plaintiff.

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not assign as error any defect in this Order to which timely objection was not made. Fed.R.Civ.P. 72(a).

Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

s/Michael Hluchaniuk

Date: April 24, 2009

Michael Hluchaniuk

United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on April 24, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to the following: Julia R. Bell, and I certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s): Pedro Velez, # 376831, SAGINAW CORRECTIONAL FACILITY, 9625 Pierce Road, Freeland, MI 48623.

s/James P. Peltier

Courtroom Deputy Clerk

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